

Heath Thompson

From: Todd Boyd <todobo@itctel.com>
Sent: Tuesday, November 26, 2013 1:52 PM
To: 'Stanton Fox'
Cc: Heath Thompson
Subject: RE: Titan Machinery Building

Stanton:

Sioux Rural Water makes no claim for the water service to the new Titan Building. Thank you for your prompt assistance in resolving this matter.

GUNDERSON, EVENSON, BOYD
& KNIGHT, LLP

TODD D. BOYD



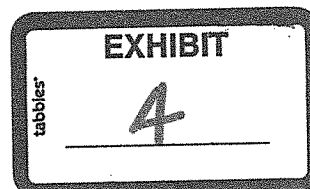
From: Stanton Fox [mailto:sfox@watertownsd.us]
Sent: Monday, November 25, 2013 3:05 PM
To: Todd Boyd
Subject: RE: Titan Machinery Building

Todd:

At today's Utility Board meeting I was asked for an update. Have you had a chance to discuss this with your Board? Thanks in advance for any reply.

Stanton W. Fox
City Attorney
City of Watertown
SDSB #2433
IL# 6270988
AK# 0011075

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From: Todd Boyd [mailto:todobo@itctel.com]
Sent: Friday, November 01, 2013 9:27 AM
To: Stanton Fox
Subject: RE: Titan Machinery Building

Stanton:

I will be meeting with the board on 11-18-13 and will let you know their thoughts thereafter.

Sincerely,

GUNDERSON, EVENSON, BOYD
& KNIGHT, LLP

Todd D. Boyd

From: Stanton Fox [mailto:sfox@watertownsd.us]
Sent: Tuesday, October 29, 2013 4:57 PM
To: Todd Boyd
Subject: RE: Titan Machinery Building

Todd:

Have you had a chance to discuss this matter further with SRW? I had a meeting at WMU today and was asked for an update. Thanks in advance for any reply.

Stanton W. Fox
City Attorney
City of Watertown
SDSB #2433
IL# 6270988
AK# 0011075

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From: Todd Boyd [mailto:todobo@itctel.com]
Sent: Wednesday, October 23, 2013 2:26 PM
To: Stanton Fox
Subject: RE: Titan Machinery Building

Stanton:

Thank you for your recent inquiry. Sioux Rural Water System disconnected the Tim Boerger residence on 5-23-11. Sioux Rural Water System currently has six Rural Development loans with a total current balance of \$2,173,118.

Our rural water system just recently hired a new manager and new office coordinator. Accordingly, we are uncertain which loan applies to which areas of our system. The oldest loan still outstanding was in January, 1997, and therefore, it is possible that if there was a loan for this area, then it may have already been paid. However, I don't believe the federal law requires a rural water system to show there is still an outstanding Rural Development for this particular area. Rather, the fact that Rural Development loans are made to a rural water system are based upon all of its customers helping to repay the loans.

The staff at Sioux Rural Water estimates that it will cost approximately \$5,000 to close the line currently serving the property and change this particular line so it will still be efficient and effective for the remaining customers on this water line.

Please let me know what is decided by the WMUD. Thank you.

Sincerely,

GUNDERSON, EVENSON, BOYD
& KNIGHT, LLP

Todd D. Boyd

From: Stanton Fox [<mailto:sfox@watertownsd.us>]
Sent: Monday, October 21, 2013 4:13 PM
To: Todd Boyd
Subject: RE: Titan Machinery Building

Todd:

Thanks for your message—I didn't know Sioux Rural Water (SRW) has outstanding federal loans. Can you please let me know when SRW incurred the debt for this portion of their service territory; when they borrowed money to build this portion of their territory and the repayment terms? I presume the Watertown Municipal Utilities Board (WMUD) will want to know that information—during the Eisenhower or Kennedy Administration the City voted to place its utilities under a separate board so this will be discussed by WMUD, not the City Council.

Also, can you let me know when SRW last provided service to the former Boerger home—the last time SRW ran water through a meter at that address?

Thanks in advance for any reply, I look forward to working through this with you. WMUD next meets on October 28th, so hopefully we can wrap this up by then.

Stanton W. Fox
City Attorney
City of Watertown
SDSB #2433

IL# 6270988
AK# 0011075

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From: Todd Boyd [mailto:todobo@itctel.com]
Sent: Thursday, October 10, 2013 9:23 AM
To: Stanton Fox
Subject: RE: Titan Machinery Building

Stanton:

Thank you for your message on 9-19-13. I'm not sure if you are aware that Sioux Rural Water System has Rural Development loans with the federal government. Hence, I am sending you a copy of an article which refers to 7 U.S.C. 1926(b) for your to review. I believe this is a good synopsis of the federal law which supercedes our state law. Also, this federal law provides our client's legal fees must be paid if the rural water system prevails.

Please let me know your thoughts after you review the federal statute. Thank you.

Sincerely,

GUNDERSON, EVENSON, BOYD
& KNIGHT, LLP

Todd D. Boyd

From: Stanton Fox [mailto:sfox@watertownsd.us]
Sent: Thursday, September 19, 2013 3:01 PM
To: Todd Boyd
Subject: RE: Titan Machinery Building

Todd:

Prior to us speaking by phone, I'll provide my opinion regarding Watertown Municipal Utilities' (WMU) obligation to reimburse expenses or compensate Sioux Rural Water (SRW) for service rights. I do not believe WMU is under any obligation to provide any compensation to SRW in this situation.

It's my understanding that prior to Titan Machinery acquiring the property, there was a single family residential farmstead on the site which has been demolished/removed. Given that, I don't believe SDCL §9-47-24 is implicated. The statute provides:

9-47-24. Election to provide service to persons being served by rural water system--Purchase of facilities.

If a municipality elects to provide water service to any person who is being served by a rural water system and who resides within the boundaries of a municipality or within three miles of the municipality as the boundaries exist on July 1, 1989, the municipality shall purchase the facilities of the rural water system which were required and used to provide service to such person. The purchase price shall be as set forth in § 9-47-23.

In this case, Titan Machinery has never been served by SRW at that location—at this point only site work's been done. As such, no "facilities of the rural water system which were required and used to provide service to such person" exist either. I believe *SDCL §9-47-24* applies only to existing customers of a rural water system. While I acknowledge SRW provided service to the family that used to live there, the statute refers to persons "being served"—in the present tense.

Stanton W. Fox
City Attorney
City of Watertown
SDSB #2433
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From: Todd Boyd [mailto:todoobo@itctel.com]
Sent: Thursday, September 19, 2013 1:12 PM
To: Stanton Fox
Subject: Titan Machinery Building

Stanton:

I serve as legal counsel for Sioux Rural Water System, Inc. It is my understanding that a new Titan Machinery building is being constructed on the edge of Watertown. This property has been served by Sioux Rural Water System for many years, and accordingly, I believe the current facilities have been completely depreciated. However, under *SDCL 9-47-24* and *9-47-23* it appears that Sioux Rural Water System is entitled to any expenses incurred to "reintegrate the system of the rural water system after detaching the portion to be sold; plus as compensation for service rights, an annual amount, payable each year for a period of 5 years, equal to the sum of five percent of the gross revenues received from the sale of water service to such person during the 5-year period. Gross revenues received shall be determined by applying the rate in effect by the purchased rural water at the time of purchase."

I ask that you please review the two statutes and advise whether you agree with the foregoing reimbursement of expenses, together with the compensation for service rights. If so, then the Sioux Rural Water System will need to know when the city's water service starts and the amount of water being used by the business for the first five years the business is operating.

Thank you for your assistance in this matter.

Sincerely,

GUNDERSON, EVENSON, BOYD

& KNIGHT, LLP

Todd D. Boyd

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